



0000067140

**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

Arizona Corporation Commission

**DOCKETED**

FEB 20 2007

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

me

IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA DEPARTMENT OF  
TRANSPORTATION TO UPGRADE A  
CROSSING OF THE UNION PACIFIC  
RAILROAD AT 36<sup>TH</sup> STREET, IN TUCSON,  
PIMA COUNTY, ARIZONA, AAR/DOT  
NO. 741-292-U.

DOCKET NO. RR-03639A-06-0731

DECISION NO. **69332****OPINION AND ORDER**

DATE OF HEARING:

January 3, 2007

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Mr. Charles Haines, Staff Attorney, Legal Division on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On November 16, 2006, the Arizona Department of Transportation ("ADOT") submitted to the Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the approval of an agreement between ADOT and the Union Pacific Railroad Company ("Railroad") to upgrade the Railroad's crossing at 36<sup>th</sup> Street in Tucson, Pima County, Arizona, at AAR/DOT No. 741-292-U ("Application").

On December 5, 2006, by Procedural Order, the Application was set for a hearing and ADOT was ordered to notify any interested party of the Application and the hearing.

On December 21, 2006, ADOT certified that notice had been provided pursuant to the terms of the Procedural Order.

On January 3, 2007, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's Railroad Safety Section was represented by counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On November 16, ADOT filed an Application in which it requested an Opinion and Order from the Commission approving an agreement between ADOT and the Railroad for the upgrade of a crossing to replace existing flashing lights with new cantilever LED automatic warning devices and new automatic gates at 36<sup>th</sup> Street in Tucson, Pima County, Arizona at AAR/DOT No. 741-292-U.

2. On December 21, 2006, ADOT filed certification that it had provided notice by registered U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on January 3, 2007.

4. The Application provides for the Railroad to install new automatic cantilever signals with new LED flashing lights and gates at the crossing.

5. Staff testified that the cost apportionment for the installation of the crossing upgrade as provided in the Application is proper.

6. Staff has recommended that the Application be approved.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. Pursuant to A.R.S. §§ 40-336 and 40-337, installation of the crossing upgrade is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

5. After installation of the crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

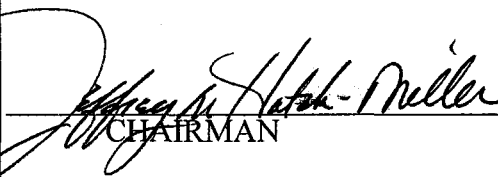
IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

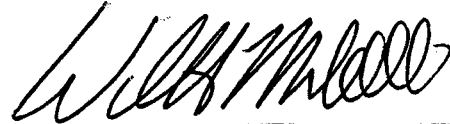
IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 20<sup>th</sup> day of Feb., 2007.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:dr

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD

2 DOCKET NO.:

RR-03639A-06-0731

3 James H. Smith

UNION PACIFIC RAILROAD COMPANY

4 10031 Foothills Blvd.

5 Roseville, CA 95747

6 John Syers

Railroad Engineering Coordinator

Arizona Department of Transportation

7 205 S. 17<sup>th</sup> Avenue, Mail Drop 618E

8 Phoenix, AZ 85007

9 David Gibson

Arizona Department of Transportation

Traffic Records Section

10 206 S. 17th Avenue, Mail Drop 064R

11 Phoenix, AZ 85007

12 Christopher Kempley, Chief Counsel

Legal Division

ARIZONA CORPORATION COMMISSION

13 1200 West Washington Street

14 Phoenix, AZ 85007

15 Brian Lehman, Chief

Railroad Safety Section

ARIZONA CORPORATION COMMISSION

16 1200 West Washington Street

17 Phoenix, Arizona 85007

18

19

20

21

22

23

24

25

26

27

28